

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX APPLICATION No 266 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-

MR.JUSTICE P.B.MAJMUDAR Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements? YES
  2. To be referred to the Reporter or not? YES :
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement? NO
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? NO
  5. Whether it is to be circulated to the Civil Judge? : NO  
NO

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COMMISSIONER OF INCOME TAX

Versus

SHAMBHULAL C. BACHKANIWALA(IND

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Appearance:

MR BB NAIK with MR MANISH R BHATT for Petitioner  
MR DA MEHTA with MR RK PATEL for Respondent No. 1

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CORAM : MR.JUSTICE B.C.PATEL and  
MR.JUSTICE P.B.MAJMUDAR  
Date of decision: 28/09/1999

ORAL JUDGEMENT (Per B.C.Patel, J.)

The Commissioner of Income-tax, Surat being  
aggrieved by an order passed by the Income Tax Appellate  
Tribunal (hereinafter referred to as the Tribunal) has

preferred this application. The Tribunal was moved by preferring six applications to refer the questions for the opinion of this Court. The finding pertaining to similar question/s would cover other references as well. So far as Application No.266 of 1999 is concerned, the following three questions were sought to be referred by the applicant:

- "1. Whether on the facts and in the circumstances of the case and in law the I.T.A.T. was justified in deleting the addition of Rs.19,03,677, Rs.17,27,447 and Rs.1,62,349 in the block periods made by the Assessing Officer by drawing an inference from the seized materials?
2. Whether on the facts and in the circumstances of the case and in law the I.T.A.T. was justified in taking the value of silver as on the date of seizure i.e. 9.1.1997 rather than the date when the assessee was found to be the owner, namely, 21.11.1996?
3. Whether on the facts and in the circumstances of the case and in law the I.T.A.T. was justified in allowing further deduction of 10% of alloy contents although the approved valuer has finally determined net silver contents of the vessels and applied the rate accordingly after allowing the impurities?"

The Tribunal, however, rejected the application and hence the present application is preferred praying that the I.T.A.T. may be directed to raise and refer to this Court the questions set out earlier.

2. We will deal with Question No.3 first. Mr.Naik submitted that, when the expert has given his opinion, the Tribunal was not justified in granting further deduction of 10% on alloy contents. It appears that the contentions raised by the assessee were rejected by the Tribunal. The articles, namely, silver utensils, weighing approximately 60 kgs. valued at Rs.4,26,800 were put under prohibitory order in the custody of the assessee on 21.11.1996. The value was assessed at the rate of Rs.7100 per kg. It transpires that the articles were seized later on on 9.1.1997. The utensils were weighed and it was found that the total weight was 75.455 kgs. as against the approximately weight of 60 kgs. So far as the value is concerned, it was calculated by the expert at the rate of Rs.6,800 per kg. The assessee contended that if the valuation is taken after allowing

deduction of 20% on account of alloy used in the manufacture of silver articles, then, there will be no addition considering the price difference. It appears that the departmental representative supported the order of the Assessing Officer, however, he fairly conceded that some deduction on account of use of alloy in the manufacture of silver articles/ utensils should have been given by the Assessing Officer and it is in view of this, 10% deduction has been given. Therefore, Question No.3 cannot be said to be a question of law.

3. So far as Question No.2 is concerned, it appears that the Tribunal accepted the contentions raised by the Department. The actual seizure was effected on 9.1.1997 and the price as per the Government Valuer's opinion was taken into consideration. Therefore, we find that when the case of the Department is accepted, it cannot be said that the Tribunal has committed any error in not referring the question to this Court.

4. So far as Question No.1 is concerned, we were taken through the assessment order and the decision rendered by the Tribunal. In paragraph 12.9, undisclosed income is considered for the period from 1987-88 to 1990-91 on the basis of turnover. The Assessing Officer estimated undisclosed income at the rate of 12.40% of the turnover. The Assessing Officer has noted in paragraph 12.2 as under:

"Although no direct information as to their volume of business outside the books is available, there is a case to estimate such income outside books with reference to undisclosed income invested in the assets and estimation of such income and accordingly it should be made."

5. From the contentions raised before the Tribunal, it appears that the Tribunal has taken into consideration the estimated turnover of income for the assessment years 1987-88 to 1990-91 and interest disallowance for assessment years 1987-88 to 1996-97. The Appellate Tribunal also noted depreciation, section 80-J of the Act and disallowance for assessment years 1991-92 and 1992-93. It was urged before the Tribunal that the Assessing Officer was not justified in making the disputed addition. It was submitted in view of the decision of this Court in the case of N.R.PAPER AND BOARDS LTD. v. DEPUTY COMMISSIONER OF INCOME-TAX reported in 234 ITR 733 (146 CTR 612) that, while framing the block assessment under section 158-BC, only

undisclosed income detected as a result of search can be taxed only on the basis of material found during the course of search, and the Assessing Officer was not justified in recomputing the total income of the assessee for the various assessment years in the block assessment for which regular assessment is required to be made under section 143 (3) of the Act. The Tribunal also considered the submissions with regard to (i) the action of the Assessing Officer in making addition by rejecting the trading accounts and estimating higher turnover and higher gross profit earned by the various assessees, (ii) making disallowances on account of interest and other expenses which were debited in the regular books of accounts. It was submitted that there was absolutely no justification in considering these aspects while passing an order under section 158-BC where only undisclosed income is required to be computed under Chapter XIV-B of the Act. The Tribunal was of the view that the inescapable conclusion is that only undisclosed income as defined in section 158-B has to be assessed under Chapter XIV-B and consequently income other than undisclosed income has to be assessed under Chapter XIV. The Tribunal has considered the decision and has reproduced the relevant paragraph from the decision of this Court in the case of N.R.PAPER & BOARDS LTD. (supra) and accordingly rendered its decision.

6. So far as the application is concerned, the Tribunal pointed out the amendment in section 158-BA of the Act with retrospective effect from 1.7.1995 by the Finance (No.2) Act, 1998 which reads as under:

"158-BA (1) Notwithstanding anything contained in any other provisions of this Act, where after the 30th day of June, 1995 a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132-A in the case of any person, then, the Assessing Officer shall proceed to assess the undisclosed income in accordance with the provisions of this Chapter.

(2) xxx xxx xxx

(a) the assessment made under this Chapter shall be in addition to the regular assessment in respect of each previous year included in the block period;

(b) the total undisclosed income relating to the block period shall not include the income

assessed in any regular assessment as income of such block period;

(c) the income assessed in this Chapter shall not be included in the regular assessment of any previous year included in the block period."

7. The Tribunal pointed out that the addition which is sought to be made can be made only for the regular assessment or reassessment framed under Chapter XIV and not in block assessment which is required to be completed under section 158-BC in Chapter XIV-B. The Tribunal was of the opinion that no referable question on law arises out of the order of the Tribunal and accordingly rejected the application.

8. We have heard learned Counsel Mr.Naik at length. In view of the decision of this Court and the amendment, we are of the view that the Tribunal has committed no error in rejecting the application and, therefore, this application is rejected. Rule is discharged with no order as to costs.

(KMG Thilake)

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